

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

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XL SPECIALTY INSURANCE COMPANY,

Plaintiff,

v.

No. 08-CV-3821 (GEL)

JOHN D. AGOGLIA, PHILLIP R. BENNETT,
LEO R. BREITMAN, EDWIN L. COX,
SUKHMEET DHILLON, THOMAS H.
DITTMER, NATHAN GANTCHER, STEPHEN
GRADY, TONE GRANT, THOMAS HACKL,
DAVID V. HARKINS, SCOTT L. JAECKEL,
DENNIS A. KLEJNA, THOMAS H. LEE,
ERIC G. LIPOFF, SANTO C. MAGGIO,
PETER MCCARTHY, JOSEPH MURPHY,
FRANK MUTTERER, RONALD L. O'KELLEY,
RICHARD N. OUTRIDGE, SCOTT A.
SCHOEN, WILLIAM M. SEXTON, GERALD
SHERER, PHILIP SILVERMAN, AND
ROBERT C. TROSTEN,

Defendants.
-----X

SUPPLEMENTAL AFFIDAVIT OF JAMES SANDNES

State of New York)
): ss.
County of New York)

James Sandnes, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and the firm of Boundas, Skarzynski, Walsh & Black, LLC, counsel for XL Specialty Insurance Company ("XL") in this action for declaratory judgment. I make this supplemental affidavit to bring before the Court a certain document relevant to XL's motion for summary judgment.

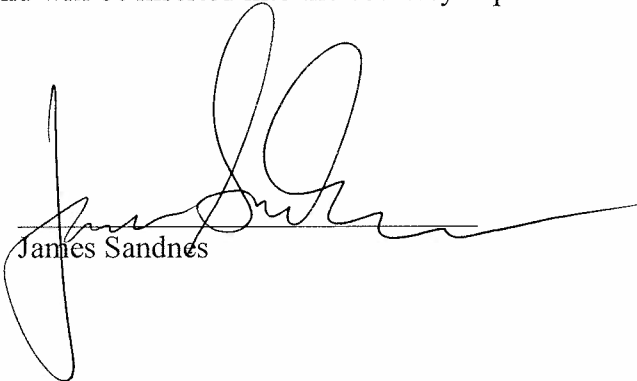
2. XL, along with the insurers in two related matters, caused to be filed in this case, on July 11, 2008, a group of joint exhibits titled "Insurers' Joint Exhibits" ("IJX"), Volume I, II and III. We planned to include, marked as IJX 25, a copy of the final judgment of conviction of Phillip R. Bennett ("Bennett"), but that document had not been entered on the ECF system as of July 11, 2008. Accordingly, we undertook to make a supplemental filing once that exhibit became publicly available.

3. On July 16, 2008, the Judgment of Conviction in *United States of America v. Bennett*, No. 05 Cr. 1192 (NRB) (S.D.N.Y.) was filed. A true and correct copy of the Judgment of Conviction is annexed hereto as IJX 25 and will be inserted into the courtesy copies of the IJX Volumes submitted to the Court.

Sworn to before me this 16th
day of July, 2008

Notary Public

ARI R. MAGEDOFF
Notary Public, State of New York
No. 02MA6150477
Qualified in New York County
Commission Expires July 31, 2010


James Sandnes

UNITED STATES DISTRICT COURT

SOUTHERN

District of NEW YORK

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

Phillip Bennett

Case Number: S3 05 Cr. 1192-01

USM Number: 58341-054

Gary Naftalis, Esq.

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 through 20☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. 371	Conspiracy to Commit Securities Fraud, Wire Fraud, Bank Fraud, and Money Laundering and Conspiracy to Make False Filings With the SEC and Material Misstatements to Auditors	Oct. 2005	1
15 U.S.C. 78j(b) & 78ff	Securities Fraud	Oct. 2005	2 & 3
15 U.S.C. 78o(d) & 78ff	Making a False Filing With the SEC Under the Securities Exchange Act of 1934	Oct. 2005	4

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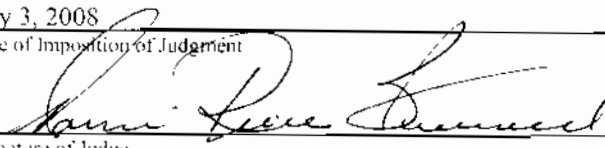
The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) Underlying Indictment _____ ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

July 3, 2008

Date of Imposition of Judgment



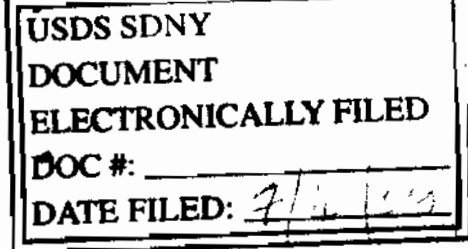
Signature of Judge

Naomi Reice Buchwald, U.S. District Court Judge

Name and Title of Judge

July 16, 2008

Date



DEFENDANT: Phillip Bennett
CASE NUMBER: S3 05 Cr. 1192-01

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
15 U.S.C. 77x	Making a False Filing With the SEC Under the Securities Act of 1933	Oct. 2005	5 & 6
18 U.S.C. 1343	Wire Fraud	Oct. 2005	7 through 13
15 U.S.C. 78m & 78ff	Making Material Misstatements to Auditors	Oct. 2005	14
18 U.S.C. 1344	Bank Fraud	Oct. 2005	15
18 U.S.C. 1957	Money Laundering	Oct. 2005	16 through 20

DEFENDANT: Phillip Bennett
CASE NUMBER: S3 05 Cr. 1192-01

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

16 years in total (16 years on Counts 1, 5, and 6; 16 years on Counts 2 through 4 and 7 through 14; 16 years on Count 15; and 10 years on Counts 16 through 20, all terms to run concurrently)

☒ The court makes the following recommendations to the Bureau of Prisons:

The defendant should be incarcerated in a facility as close to his home as possible and should not be imprisoned in a facility for sentenced criminal aliens.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on September 4, 2008.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Phillip Bennett
CASE NUMBER: S3 05 Cr. 1192-01

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

5 years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Phillip Bennett
CASE NUMBER: S3 05 Cr. 1192-01

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall provide the probation officer with access to any requested financial information.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule.

The defendant shall obey the immigration laws and comply with the directives of immigration authorities.

The defendant shall be supervised in his district of residence.

DEFENDANT: Phillip Bennett
 CASE NUMBER: S3 05 Cr. 1192-01

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 2000.00	\$ --	\$ see below

☒ The determination of restitution is deferred until 10/1/08. An *Amended Judgment in a Criminal Case* (AO 245C) will be after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ <u>00.00</u>	\$ <u>00.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.